United Nations CAT/C/LTU/CO/3*

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the third periodic report of Lithuania**

1. The Committee against Torture considered the third periodic report of Lithuania (CAT/C/LTU/3) at its 1230th and 1233rd meetings, held on 12 and 13 May 2014 (see CAT/C/SR.1230 and CAT/C/SR.1233), and adopted the following concluding observations at its 1242nd and 1243rd meetings (see CAT/C/SR.1242 and CAT/C/SR.1243), held on 20 May 2014.

A. Introduction

2. The Committee expresses its appreciation to the State party for accepting the optional reporting procedure and for having submitted on time its third periodic report (CAT/C/LTU/3) thereunder, as it improves the cooperation between the State party and the Committee and focuses the examination of the report as well as the dialogue with the delegation.

3. The Committee appreciates the quality of its dialogue with the State party's high-level multisectoral delegation and of the responses provided orally to the questions and concerns raised during the consideration of the report.

B. Positive aspects

4. The Committee welcomes the fact that, since the consideration of the second periodic report, the State party has ratified or acceded to the following international instruments:

(a) Convention on the Rights of Persons with Disabilities and its Optional Protocol, on 18 August 2010;

(b) Council of Europe Convention on Action against Trafficking in Human Beings, on 7 July 2012;

* Reissued for technical reasons on 23 June 2014.

** Adopted by the Committee at its fifty-second session (28 April–23 May 2014).

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(c) Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 6 November 2012;

(d) 1961 Convention on the Reduction of Statelessness, on 22 July 2013;

(e) International Convention for the Protection of All Persons from Enforced Disappearance, on 14 August 2013;

(f) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 14 January 2014.

5. The Committee welcomes the State party's efforts to revise its legislation in areas of relevance to the Convention, including:

(a) Adoption of Law No. XI-303 supplementing the Criminal Code, making criminal liability for hate crimes more stringent, and of the new paragraph 13 of article 60 of the Criminal Code, under which hate crimes are considered as an aggravating circumstance, on 16 June 2009;

(b) Amendments to article 176 of the Code of Criminal Procedure, establishing the maximum length of pretrial detention, on 21 September 2010;

(c) Amendments to articles 100 and 103 of the Criminal Code, expanding the range of criminal acts covered, on 22 March 2011;

(d) Law on Protection against Domestic Violence, entry into force on 15 December 2011;

(e) Law on Probation, entry into force on 1 July 2012;

(f) Amendments to the Lithuanian Citizenship Act, decreasing from 10 to 5 years the requirements of stay for stateless persons, introduced in May 2013 after the State's accession to the 1961 Convention on the Reduction of Statelessness;

(g) Amendments to the Law on the Legal Status of Aliens, 24 October 2013;

(h) Amendments to the law on the Seimas Ombudsman, whose office will exercise the national preventive mechanism functions under the Optional Protocol to the Convention, on 1 January 2014;

(i) Amendments to the Criminal Code and the introduction of a new article 147, paragraph 2, of the Criminal Code, expanding criminal liability in relation to trafficking in human beings.

6. The Committee also welcomes the efforts of the State party to amend its policies, programmes and administrative measures to give effect to the Convention, including:

(a) National Strategy for the Elimination of Violence against Women;

(b) Hygiene norm HN 37:2009 entitled "Police detention facilities: general health safety requirements", approved on 29 September 2009;

(c) Strategy for the Renovation of Places of Imprisonment, approved by government resolution on 30 September 2009;

(d) National Programme for Drug Control and Drug Addiction Prevention 2010–2016, approved on 4 November 2010;

(e) Amendments to the Regulations for Examination of Requests for Pardon, Presidential Decree No. 1K-852 of 11 November 2011;

(f) Programme for the Optimization of the Operations of Police Detention Facilities 2009–2015;

(g) Plan of Implementing Measures 2009–2017 in relation to the Strategy for the Renovation of Places of Imprisonment;

(h) National Programme for Prevention of and Response to Violence against Children 2011–2015;

(i) National Programme for the Prevention of Domestic Violence and for Victim Support 2014–2020.

C. Principal subjects of concern and recommendations

Definition of torture

7. Recalling its previous concluding observations (CAT/C/LTU/CO/2, para. 5), the Committee is concerned that the definition of torture as contained in article 1 of the Convention has not been incorporated into national law, which may create loopholes for impunity, as outlined in general comment No. 2 (2007) on the implementation of article 2 by States parties. (art. 1)

The State party should amend its legislation to include in the Criminal Code a definition of torture that is in conformity with the Convention and covers all the elements contained in article 1, including the inflicting of torture on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Torture as a specific criminal offence

8. The Committee is concerned that since the Criminal Code does not contain a separate article for penalizing torture, the penalties for acts of torture have been incorporated into different articles of the Criminal Code, and are not appropriate punishment for such criminal offences, taking into account their gravity. In addition, the Committee is concerned that article 103 of the Criminal Code, which provides for criminal liability for individuals who inflict torture, only covers persons protected under international humanitarian law. (arts. 2 and 4)

The State party should amend its legislation to include torture as a specific offence in the Criminal Code, with appropriate penalties for acts of torture that take into account their grave nature, as set out in article 4, paragraph 2, of the Convention.

Statute of limitations for acts of torture

9. The Committee is concerned that paragraph 5 of article 95 of the Criminal Code, which lists crimes that are not subject to a statute of limitations, includes acts of torture only against persons protected under international humanitarian law. (arts. 2 and 4)

The State party should ensure that there is no statute of limitations for acts of torture, including with regard to persons not protected under international humanitarian law, so that acts of torture and attempts to commit torture can be investigated, prosecuted and punished without a time bar.

Fundamental legal safeguards

10. The Committee is concerned that detained persons do not enjoy in practice all the fundamental legal safeguards against torture and ill-treatment that should be afforded from the very outset of deprivation of liberty, such as the right to be informed of and understand

their rights, the right to have access to a lawyer, the right to an independent doctor and the right to inform a relative or person of their choice. (arts. 2, 12, 13 and 16)

The State party should take effective measures to guarantee that all detained persons are afforded, by law and in practice, all fundamental legal safeguards from the outset of deprivation of liberty, in particular the rights to be informed of and understand their rights, to prompt access to a lawyer and, if necessary, to legal aid; the right to notify a member of their family or another appropriate person of their own choice; and the right to have access to a medical examination by an independent doctor and, if possible, a doctor of their choice, in accordance with international standards. All health-related tasks in police stations should be performed by qualified medical personnel.

Pretrial and administrative detention

11. The Committee is concerned at the duration of and the high number of persons held in pretrial and administrative detention and that pretrial detention is not used as a measure of last resort. It is also concerned that remand prisoners may be returned from prison to police custody several times and that persons can be held in police arrest houses for long periods, serving consecutive penalties for administrative offences. In addition, it is concerned at the placement of minors in "socialization centres", which amounts to administrative detention, and their placement in "relaxation rooms" for violations of discipline, which amounts to solitary confinement. (arts. 2, 10 and 16)

The State party should:

(a) Adopt all necessary measures to reduce resort to pretrial detention and its duration, ensure that pretrial detainees are brought before a judge without delay, and eliminate detention for administrative offences;

(b) Review "socialization centres" where minors are held in de facto administrative detention and ensure effective monitoring of such institutions in order to prevent any breach of the Convention;

(c) Ensure that there is minimal detention on remand in police stations, even for a few days, and that persons remanded in custody are always promptly transferred to a remand centre;

(d) Take steps, including of a legislative nature, to ensure that prisoners are not returned to police detention facilities and that each case is subject to the approval of a prosecutor under judicial oversight;

(e) Provide training to law enforcement and judicial professionals on alternatives to incarceration, such as probation, mediation, community service and suspended sentences, taking into account the provisions of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules).

Life-sentenced prisoners

12. While noting the entry into force in 2012 of the Law on Probation, the Committee is concerned that article 158 of the Criminal Punishment Enforcement Code prohibits life-sentenced prisoners from being released on parole unless the life sentence is replaced by fixed-term imprisonment. It is also concerned that life-sentenced prisoners are detained separately from the rest of the prison population. (arts. 2, 11 and 16)

The Committee recommends that the State party take steps to ensure that there is no blanket prohibition for life-sentenced prisoners to apply for release on parole for good reasons. Measures should be taken to integrate life-sentenced prisoners into the general prison population.

Domestic violence

13. The Committee is concerned that domestic violence does not constitute a separate crime in the Criminal Code. (arts. 2, 12, 13, 14 and 16)

The State party should:

(a) Amend its legislation to ensure that domestic violence is a separate crime in the Criminal Code;

(b) Ensure that victims of domestic violence benefit from protection and have access to medical and legal services, including psychosocial counselling, to redress, including rehabilitation, and to safe and adequately funded shelters;

(c) Compile and provide the Committee with disaggregated data on the number of complaints, investigations, prosecutions and sentences handed down for acts of domestic violence, on the provision of redress to the victims and on the difficulties experienced in preventing such acts.

Trafficking in human beings

14. While amendments have been made to the Criminal Code in relation to trafficking in human beings, the Committee is concerned that the State party remains a country of origin, transit and destination of human trafficking and is registering a rise in the number of cases. It is also concerned that six Lithuanian nationals from an organized crime gang charged with trafficking in women have not been sentenced since 2010. (arts. 2, 10, 12, 13 and 16)

The State party should:

(a) Take effective measures to prevent human trafficking, including vigorous enforcement of anti-trafficking legislation and enhancement of international cooperation to combat trafficking, in particular for the purpose of sexual exploitation;

(b) Continue to conduct specialized training for the police, prosecutors and judges, migration officers and border police, including on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime and on effective prevention, investigation, prosecution and punishment of acts of trafficking, and continue nationwide awareness-raising and media campaigns about the criminal nature of such acts;

(c) Promptly, effectively and impartially investigate, prosecute and punish trafficking in persons and related practices;

(d) Provide redress to victims of trafficking.

National human rights institution

15. The Committee is concerned at the absence in the State party of a national human rights institution in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). It is also concerned as to whether the Seimas Ombudsman will have sufficient financial and staffing resources to carry out both the mandate of the national human rights institution and that of the national preventive mechanism under the Optional Protocol to the Convention (art. 2).

The State party should:

(a) Amend its legislation to expand the mandate of the Seimas Ombudsman to function effectively as a national human rights institution in full compliance with the Paris Principles, with a view to seeking accreditation from the International

Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights;

(b) Allocate adequate financial and staffing resources to enable the Seimas Ombudsman to function effectively as both the national human rights institution and as the national preventive mechanism in compliance with the Optional Protocol to the Convention.

Investigations in the context of countering terrorism

16. While noting that the Prosecutor General's Office opened on 13 February 2014 a pretrial investigation in relation to article 292, paragraph 3, of the Criminal Code, the Committee is concerned that the Parliamentary investigation failed to determine whether Central Intelligence Agency detainees were held in or transited through Lithuanian territory and that the pretrial investigation launched by the Prosecutor General's Office was terminated owing to the applicability of the statute of limitations, which precludes disciplinary action, and the fact that the file constitutes an official secret. (arts. 2, 3, 12, 13 and 16)

The Committee:

(a) Urges the State party to complete the investigation into allegations of its involvement in the Central Intelligence Agency rendition and secret detention programmes within a reasonable time. It also recommends that the State party inform the public and ensure that its investigation process is transparent;

(b) Requests the State party to provide it with an update on the outcome of the pretrial investigation initiated by the Prosecutor General's Office in relation to article 292, paragraph 3, of the Criminal Code regarding the unlawful transportation of persons across the State border.

Asylum seekers

17. The Committee is concerned about the detention of all asylum seekers, throughout the asylum procedure, at the Foreigners' Registration Centre in Pabrade, which lacks adequate reception conditions, including social, psychological and rehabilitation services. Traumatized persons and those with specific needs, including women, are not housed separately. The Centre is also used as an administrative detention facility for migrants in an irregular situation. It is also in need of renovation. (arts. 3, 14 and 11)

The State party should:

(a) Refrain from detaining asylum seekers and illegal immigrants for prolonged periods and use the detention of asylum seekers only as a measure of last resort for as short a period as possible;

(b) Promote alternatives to detention and revise policy in order to bring it into line with the Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum Seekers and Alternatives to Detention published by the Office of the United Nations High Commissioner for Refugees;

(c) Put in place a mechanism to identify persons with special needs and possible victims of torture, and provide legal and practical mechanisms to ensure full redress for torture victims;

(d) Proceed with the announced reconstruction of the Foreigners' Registration Centre, in which vulnerable persons will be offered separate accommodation.

Training

18. The Committee is concerned at the absence of specific methodologies to evaluate the effectiveness, including the impact on the number of cases of torture and ill-treatment, of the training and educational programmes on provisions of the Convention for law enforcement personnel, prison staff, border guards, medical personnel, prosecutors and judges. It is also concerned that training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) is not provided to all medical professionals dealing with persons deprived of liberty and asylum seekers. (art. 10)

The State party should:

(a) Further develop and strengthen training programmes to ensure that all public officials, including law enforcement, prison and immigration officers, as well as judges, are aware of the provisions of the Convention;

(b) Provide training on the Istanbul Protocol for medical personnel and other officials who deal with detainees and asylum seekers and who are involved in the investigation and documentation of cases of torture;

(c) Develop methodologies to assess the effectiveness and impact of training programmes on the prevention and absolute prohibition of torture and ill-treatment.

Conditions of detention in police arrest houses

19. The Committee is concerned that material conditions, such as hygiene, access to natural and artificial light, ventilation, the partitioning of sanitary facilities and clean mattresses and bedding, in police arrest houses, as well as the regimen offered to detained persons in terms of daily outdoor exercise in certain police facilities, are not in conformity with international standards. The Committee is also concerned that administrative detainees can be held in such cells for several months. It is particularly concerned at the conditions in the Vilnius City Police Headquarters Arrest House, especially with regard to a number of cells with no access to natural light or ventilation that are also used for lengthy administrative detention. (arts. 11, 13 and 16)

The State party should:

(a) Continue to take steps to improve conditions in police detention facilities with regard to material conditions, including infrastructure, hygiene, access to natural and artificial light, ventilation, the partitioning of sanitary facilities, and clean mattresses and bedding, as well as with regard to the regimen of outdoor activities, in accordance with the Standard Minimum Rules for the Treatment of Prisoners;

(b) Ensure that the renovation of existing police detention facilities and the building of new ones continues according to schedule, and ensure that police arrest houses are properly equipped to hold administrative detainees;

(c) Comply with the Programme for the Optimization of the Operations of Police Detention Facilities 2009–2015 and with the hygiene norms entitled "Police detention facilities: general health safety requirements".

Conditions of detention in prison facilities and inter-prisoner violence

20. The Committee is concerned at the high number of prisoners in the penitentiary system, which results in serious overcrowding in some prison facilities and gives rise to inter-prisoner violence, mostly a result of inadequate management and staffing. It is also concerned that the infrastructure and poor material conditions in a number of prisons, especially in the Lukiskes and Siauliai prisons, including living space per prisoner, are not in conformity with international standards and that prisoners are not provided with a

constructive regime. The Committee is also concerned at allegations of excessive use of force by prison staff in certain facilities. (arts. 2, 11, 12, 13 and 16)

The State party should:

(a) Enhance steps to improve the material conditions of detention in conformity with the appropriate provisions of the Standard Minimum Rules for the Treatment of Prisoners, which are currently under revision, particularly in the Lukiskes and Siauliai prisons, including by ensuring the best existing international standards of living space per prisoner, by renovating existing prison facilities, closing those unfit for use, notably the Lukiskes prison, and building new ones, and providing prisoners with constructive and purposeful activities, in accordance with the Plan of Implementing Measures 2009–2017 in relation to the Strategy for the Renovation of Places of Imprisonment;

(b) Enhance steps to reduce inter-prisoner violence by: improving prison management and the prisoner/staff ratio; strengthening the monitoring and management of vulnerable prisoners; and implementing the Programme for the Prevention of Manifestations of the Criminal Subculture in Places of Imprisonment, of 20 January 2009, and the Procedure for the Prevention and Investigation of Injuries of Detainees and Convicts in Places of Imprisonment, Order No. V-180 of 21 May 2012;

(c) Ensure that all reports of excessive use of force by prison staff are investigated promptly, effectively and impartially by an independent mechanism with no institutional or hierarchical connection between the investigators and the alleged perpetrators, and ensure that all persons under investigation for having committed acts of torture or ill-treatment are immediately suspended from their duties and remain so throughout the investigation, while ensuring that the principle of presumption of innocence is observed;

(d) Prosecute persons suspected of ill-treatment and, if found guilty, ensure that they are punished in accordance with the gravity of their acts;

(e) Ensure that the Seimas Ombudsman and other independent mechanisms regularly monitor and visit all places of detention;

(f) Establish a mechanism to deal with the complaints of inmates about their conditions of detention and provide effective follow-up to such complaints for the purpose of remedial action;

(g) Provide training to prison staff and medical personnel on communication with and the managing of inmates and on detecting signs of vulnerability;

(h) Resort more to alternatives to incarceration, taking into account the provisions of the Tokyo Rules.

Redress, including compensation and rehabilitation

21. While noting the Law on Compensation of Damage Resulting from Unlawful Actions of Institutions of Public Authority and the Representation of the State, the Committee is concerned that there is no explicit provision in domestic legislation and no specific programmes of assistance and support that provide for the right of victims of torture and ill-treatment to fair and adequate compensation, including the means for as full rehabilitation as possible, as required by article 14 of the Convention. (art. 14)

The State party should amend its legislation to include explicit provisions on the right of victims of torture and ill-treatment to redress, including fair and adequate compensation and rehabilitation, in accordance with article 14 of the Convention. It should, in practice, provide all victims of torture or ill-treatment with redress, including fair and adequate compensation, and as full rehabilitation as possible, and

should allocate the necessary resources for the effective implementation of rehabilitation programmes.

The Committee draws the attention of the State party to its general comment No. 3 (2012) on the implementation of article 14 by States parties, in which it clarifies the content and scope of the obligation of States parties to provide full redress to victims of torture.

Statements made as a result of torture

22. The Committee is concerned at the methods of criminal investigation whereby confession is relied on as the primary and central element of proof in criminal prosecution. It is further concerned that the Code of Criminal Procedure provides for "procedural coercive measures" and that "physical force may be used only to the extent necessary to eliminate prevention of performance of a procedural step". (arts. 2, 15 and 16)

The State party should:

(a) Take the steps necessary to ensure in practice that confessions obtained as a result of torture and ill-treatment, in all cases and in line with domestic legislation and the provisions of article 15 of the Convention, are not admissible in court;

(b) Improve the methods of criminal investigation to end practices whereby confession is relied on as the primary and central element of proof in criminal prosecution, in some cases in the absence of any other evidence;

(c) Submit information on the application of the provisions prohibiting the admissibility of evidence obtained under duress and on whether any officials have been prosecuted and punished for extracting such confessions.

Involuntary hospitalization and involuntary medical treatment

23. While taking note that a working group is in the process of drafting amendments to the Law on Mental Health Care, the Committee is concerned at the absence of legal safeguards concerning involuntary civil hospitalization and involuntary medical treatment of persons with mental and psychosocial disabilities in psychiatric institutions. It is also concerned that courts have only 48 hours to reach decisions on hospitalization. (arts. 2, 11 and 16)

The State party should:

(a) Ensure that the amended Law on Mental Health Care provides guarantees for effective legal safeguards for all persons with mental and psychosocial disabilities concerning civil involuntary hospitalization as well as concerning involuntary psychiatric and medical treatment in psychiatric institutions;

(b) Review the legal status of patients and ensure that patients' consent is requested both with regard to hospitalization and in relation to psychiatric medical treatment, and that they are allowed to avail themselves of the right to appeal against the decision;

(c) Ensure the patient's right to be heard in person by the judge ordering the hospitalization and that the court always seeks the opinion of a psychiatrist who is not attached to the psychiatric institution admitting the patient;

(d) Ensure regular visits of psychiatric institutions by a mandated outside body independent of the health authorities;

(e) Establish an independent complaints mechanism; publish a brochure with its procedures and ensure its distribution to patients and families; and investigate effectively, promptly and impartially all complaints of ill-treatment of persons with

mental and psychosocial disabilities hospitalized in psychiatric institutions, bring those responsible to justice and provide redress to victims.

Corporal punishment of children

24. The Committee is concerned that corporal punishment of children in the home and in alternative and day-care settings is not prohibited in national law. (arts. 2 and 16)

The State party should amend its national legislation to prohibit and criminalize all forms of corporal punishment of children in all environments and settings, in accordance with international standards, conduct public awareness-raising campaigns about its harmful effects and promote positive non-violent forms of discipline as an alternative to corporal punishment.

Hazing and ill-treatment in the army

25. The Committee is concerned at reports of hazing in the army. It takes note of the State party's confirmation that conscription has been abolished. (arts. 2 and 16)

The State party should:

(a) Reinforce measures to prohibit and eliminate ill-treatment in the armed forces and ensure prompt, impartial and thorough investigation of all allegations of such acts;

(b) Provide the Committee with information on the follow-up to any confirmed cases of hazing in the army;

(c) Establish, where evidence of hazing is found, the liability of direct perpetrators and those in the chain of command, prosecute and punish those responsible with penalties that are consistent with the gravity of the act committed, and make the results of such investigations public;

(d) Provide redress and rehabilitation to victims, including through appropriate medical and psychological assistance, in accordance with general comment No. 3.

Other issues

26. The Committee reiterates its recommendation that the State party consider making the declarations under articles 21 and 22 of the Convention.

27. The Committee invites the State party to consider ratifying the United Nations human rights treaties to which it is not yet party, namely, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

28. The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations in appropriate languages, including Russian, through official websites, the media and non-governmental organizations.

29. The Committee requests the State party to provide, by 23 May 2015, follow-up information in response to the Committee's recommendations relating to: (a) strengthening legal safeguards for persons deprived of their liberty; (b) pretrial and administrative detention; and (c) conditions of detention in police arrest houses, as contained in paragraphs *10, 11 and 19, respectively, of the present document.*

30. The State party is invited to submit its next report, which will be the fourth periodic report, by 23 May 2018. For that purpose, the Committee will, in due course, submit to the

State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.